



**U.S. Citizenship  
and Immigration  
Services**

(b)(6)

Date: **AUG 21 2013**

Office: BALTIMORE

FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Permission to Reapply for Admission into the United States after Deportation or Removal under section 212(a)(9)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)(iii)

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

  
Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The application for permission to reapply for admission after removal was denied by the District Director, Baltimore, Maryland, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The applicant's application for permission to reapply for admission will be conditionally approved.

The applicant is a native and citizen of El Salvador who entered the United States without inspection in 1983 and subsequently filed a Request for Asylum. The applicant's request for asylum and voluntary departure were denied in August 1984 and the applicant was ordered deported. *Decision of the Immigration Judge*, dated August 6, 1984. The record establishes that the applicant remained in the United States and failed to depart from the United States.

The district director found that the applicant had failed to establish that he merited favorable consideration. The applicant's Form I-212, Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) was denied accordingly. *Decision of the District Director*, dated September 13, 2012.

In support of the appeal, counsel for the applicant submits a brief and a psychological evaluation pertaining to the applicant. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(9) of the Act states in pertinent part:

(A) Certain aliens previously removed.-

- (i) Arriving aliens.- Any alien who has been ordered removed under section 235(b)(1) or at the end of proceedings under section 240 initiated upon the alien's arrival in the United States and who again seeks admission within five years of the date of such removal (or within 20 years in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.
- (ii) Other aliens.- Any alien not described in clause (i) who-
  - (I) has been ordered removed under section 240 or any other provision of law, or
  - (II) departed the United States while an order of removal was outstanding, and who seeks admission within 10 years of the date of such alien's departure or removal (or within 20 years of such date in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

- (iii) Exception.- Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the alien's reembarkation at a place outside the United States or attempt to be admitted from foreign contiguous territory, the Secretary has consented to the alien's reapplying for admission.

The record reflects that the applicant was ordered deported from the United States in August 1984. The applicant's deportation order will, therefore, render him inadmissible pursuant to section 212(a)(9)(A)(ii) of the Act upon his departure from the United States, and he will require permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act. The applicant may apply for conditional approval of Form I-212 under 8 C.F.R. § 212.2(j) before departing the United States, notwithstanding his ineligibility for adjustment of status. See *Instructions for Form I-212*. The approval of Form I-212 under these circumstances is conditioned upon the applicant's departure from the United States, and the Field Office Director with jurisdiction over the applicant's place of residence has jurisdiction over the application, irrespective of whether a waiver under section 212(g), (h), (i), or 212(a)(9)(B)(v) is needed.<sup>1</sup> See *Instructions for Form I-212, Appendix I*.

In *Matter of Tin*, 14 I&N Dec. 371 (Reg. Comm. 1973), the Regional Commissioner listed the following factors to be considered in the adjudication of a Form I-212:

The basis for deportation; recency of deportation; length of residence in the United States; applicant's moral character; his respect for law and order; evidence of reformation and rehabilitation; family responsibilities; any inadmissibility under other sections of law; hardship involved to himself and others; and the need for his services in the United States.

In the instant case, the applicant submits documentation establishing his ties to the United States, including the presence of his U.S. citizen spouse, his spouse's two children, who he helped raise, and their grandchildren. The record further establishes that the applicant has been residing in the United States for almost three decades. In addition, a letter has been provided establishing the applicant's gainful employment, since 1994, earning \$12.00 an hour. See *Letter from* [REDACTED] dated February 23, 2011. Moreover, evidence has been provided establishing extensive community ties to the United States as a result of having resided in the United States since 1983, including home ownership, the payment of taxes and support letters from long-term friends.

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<sup>1</sup> It is also noted that the applicant, upon departure from the United States, will have accrued over a year of unlawful presence in the United States from April 1, 1997, the effective date of the unlawful presence provisions of the Act, until the date of the applicant's departure. As such, the applicant will be inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II). In order to seek a waiver of inadmissibility under this provision, the applicant will be required to file a Form I-601 waiver application together with his application for an immigrant visa.

Finally, a statement has been provided from the applicant's U.S. citizen spouse. The applicant's spouse details that she migrated to the United States in 1982 and began a romantic relationship with the applicant shortly thereafter. She notes that he helped raise her two young children after their biological father was killed. The applicant's spouse maintains that her husband financially supported her and her children and he is the only father they know. In 1999, the applicant's spouse explains that she and her husband bought a home where they currently live with her son, her daughter, her daughter's husband and the three grandchildren. In 2010, the applicant's spouse states that her husband had a heart attack and they have many medical expenses. She concludes that she, her children and her grandchildren love the applicant and want him to remain in the United States as he provides the family with emotional and financial support. *Letter from [REDACTED]*, dated May 21, 2010. Counsel, on appeal, references the problematic country conditions in [REDACTED]. The AAO notes that the U.S. Government continues to grant El Salvadorans living in the United States Temporary Protected Status (TPS), thus confirming the difficult conditions in El Salvador.

The favorable factors in this matter are the hardships the applicant's U.S. citizen spouse, children and grandchildren would face if the applicant were to relocate to El Salvador, regardless of whether they accompanied the applicant or remained in the United States, the approval of the Petition for Alien Relative (Form I-130) filed on behalf of the applicant in May 1997, the applicant's long-term gainful employment in the United States, his community ties and the passage of almost three decades since the applicant was ordered removed. The unfavorable factors in this matter are the applicant's entry without inspection in 1983, the deportation order issued to the applicant in 1984, the applicant's failure to depart pursuant to the deportation order, and periods of unauthorized presence and employment in the United States.

The applicant's violations of immigration law cannot be condoned, but it is noted that the applicant has been residing in the United States for almost three decades. The applicant has a U.S. citizen spouse who he has been with for almost thirty years and married to for over fifteen years. The record indicates that the applicant has been gainfully employed for almost two decades with the same employer.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has been met.

**ORDER:** The applicant's Form I-212 appeal is granted and the application is approved, with approval conditioned on the applicant's departure from the United States.